IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

RSA.No. 1013 of 2006()

AS.71/2001 of SUB COURT,NEYYATTINKARA
OS.353/1993 of I ADDL.M.C.,NEYYATTINKARA

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APPELLANT/APPELLANT/7TH DEFENDANT.

SATHEESH, S/O.PARAMESWARAN NADAR,
RESIDING AT SATHEESH VILLA, PUTHENCHANTHA,
MURIYANKARA DESOM, PARASSALA PAKUTHY.

BY ADV. SRI.V.N.GOPALAKRISHNAN NAIR
SRI.AYYAPPAN SANKAR
SRI.G.ARUN

RESPONDENTS:

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1. THANKAMONI, D/O.PONNU NADAR,
RESIDING AT LALI BHAVAN, MENIKKONAM,
MURIYANKARA DESOM, PARASSALA PAKUTHY.

2. SREEDHARAN, S/O.PONNU NADAR,
SREEHA BHAVAN, PUTHENCHANTHA,
MENILKKONAM, MURIYANKARA DESOM,
PARASSALA PAKUTHY.

3. GANGADHARAN,
S/O.PONNU NADAR, SARALA COTTAGE,
NEDUVANCILA, KARUMANOOR DESOM,PARASSALA PAKUTHY.

4. PARAMESWARAN, S/O.PONNU NADAR,
PUTHUVAL PUTHEN VEEDU, PUTHANCHANTA,
MURIYANKARA DESOM, PARASSALA PAKUTHY.

5. RAJU, S/O.PONNU NADAR,
PUTHUVAL PUTHEN VEEDU, PUTHENCHANTHA,
MURIYANKARA DESOM, PARASSALA PAKUTHY.

6. SASIKUMAR, S/O.PONNU NADAR,
PUTHUVAL PUTHEN VEEDU, PUTHENCHANTHA,
MURIYNAKARA DESOM, PARASSALA PAKUTHY.

7. RABEKKAL MARTIN,
D/O.RATHINAM, OMANA BHAVAN, PALUKAL DESOM,
PALUKAL PAKUTHY, VILAVANCODE TALUK,
K.K.DISTRICT.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 2423/06 IN RSA 1013/06

DISMISSED

13/3 /2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.1013 OF 2006

Dated 13th March 2007

J U D G M E N T

7th defendant in O.S.353/93 on the file of First Additional Munsiff court, Neyyattinkara is the appellant. Plaintiff and other defendants in the suit are respondents. Suit was filed for partition and separate possession of 1/8th share due to first respondent. Plaintiff and defendants 1 to 6 are children of Ananthan Nadar Ponnu Nadar. Plaint schedule property admittedly belonged to Babu son of Ponnu Nadar and brother of plaintiff and defendants 1 to 6 under Ext.A1 gift deed. Babu died and on his death his rights devolved on mother Rethnam and father Ponnu Nadar. Appellant is grand son of Ponnu Nadar. Mother Rethnam died on 14/2/1992. On the death of Ponnu Nadar and Rethnam their rights also devolved on respondents 1 to 6. Suit was filed contending that respondent is entitled to get his 1/8th share separated. Defendants 1 to 6 remained ex-parte. Only appellant contested the suit. Appellant contended

that as per Ext.B1 sale deed he has absolute right over property and therefore plaint schedule property is not available for partition. It was also contended that on the death of Babu his right devolved on him. Learned Munsiff framed necessary issues. On the evidence of Pws.1 and 2 and Dws.1 and 2 and Exts.A1 to A4, Exts.B1 to B8 and Exts.X1 to X4 learned Munsiff found that on the death of Babu his rights devolved on Ponnu Nadar and his widow and plaintiff and defendants 1 to 6 equally and appellant is entitled to 1/8th share. Preliminary decree for partition was passed. Appellant challenged the decree and judgment before Sub court, Neyyattinkara in A.S.71/2001. Learned Sub Judge on re-appreciation of evidence confirmed the preliminary decree and judgment and dismissed the appeal. It is challenged in this second appeal.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant was that parties are Christians and therefore inheritance is as provided under Indian Succession Act and not Hindu Succession Act as found by courts below and therefore the decree and judgment are unsustainable.

3. On going through the judgments of courts below and hearing learned counsel appearing for

appellant, I do not find any substantial question of law involved in the second appeal. Though argument is built up as if parties are Christians and therefore Indian Succession Act is applicable, courts below found that deceased Babu and the parents were Hindus and not Christians. That factual findings are arrived at on the basis of evidence. It cannot be interfered in exercise of the powers under Section 100 of Code of Civil Procedure. When it was proved that deceased and parents are Hindus, inheritance is as provided under Hindu Succession Act and not Indian Succession Act. Courts below rightly applied Hindu Succession Act and found that plaintiff is entitled to 1/8th share. There is no merit in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.